

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
8

9 Nancy K. Duckett,

10 Plaintiff,

11 v.

12 Dennis M. Enomoto, et al.,

13 Defendants.

No. CV-14-01771-PHX-NVW

ORDER

14 Before the Court are Defendants Carol Sevryn and Carol Sevryn Trust
15 Management Services' Motion to Dismiss (Doc. 14), Plaintiff's Response (Doc. 19), the
16 United States' Response (Doc. 20) and Defendant Dennis Enomoto's Response (Doc.
17 21).

18 In her last will and testament, the decedent, Miyoko Enomoto, devised one-third
19 of her estate to a trust set up to benefit her son, Dennis Enomoto. The will appoints Carol
20 Sevryn Trust Management Services as trustee but gives Dennis Enomoto "the limited
21 authority to request the removal of the Trustee and appoint a successor Trustee." Doc. 1-
22 2 at 34. Almost a year and a half after the will was admitted to probate, Sevryn mailed
23 copies of a "Rejection of Appointment as Trustee" form to counsel for Plaintiff and for
24 the United States on August 7, 2014. Two weeks later, she also sent the other parties a
25 signed "Resignation" form announcing that she was resigning her position as trustee,
26 thereby creating a vacancy in the trusteeship. A.R.S. § 14-10704. Dennis Enomoto
27 subsequently retained Kurt Tittelbach, of Premier Fiduciary Services, to serve as trustee
28 of the trust established by the decedent. Doc. 18 at 2.

1 With the appointment of Tittelbach, the moving Defendants no longer have any
2 interest in this interpleader action. For that reason, Dennis Enomoto does not object to
3 the instant Motion. Plaintiff argues in its Response that the Motion should be denied
4 because the moving Defendants are “necessary parties to this action.” Doc. 19 at 2. That
5 Response, however, was submitted to the Court on October 6, 2014, the same day Dennis
6 Enomoto filed an Answer (Doc. 18) that announced the retention of Tittelbach. It
7 appears Plaintiff was not aware, at the time it filed its Response, that a new trustee had
8 been named to take the moving Defendants’ place. Regardless, now that Tittelbach has
9 assumed the trusteeship, the moving Defendants can no longer be described as “necessary
10 parties.”

11 The moving Defendants request an award of attorney’s fees and costs from
12 Plaintiff. The United States objects to the Motion only to the extent that any attorney’s
13 fees or costs would be awarded against the interpleaded funds. The moving Defendants
14 do not cite any statute, rule or other source of law that would justify an award of fees or
15 costs. Instead, they merely assert fees and costs are proper because “counsel for the
16 Plaintiff knew or should have known that the [moving] Defendants had no adverse claim
17 to the money referenced in the interpleader.” Doc. 14 at 3. Even assuming this is true,
18 the moving Defendants have not carried their burden of demonstrating that it entitles
19 them to fees or costs. Because there appears to be no basis for any such award, the Court
20 will not order Plaintiff to pay attorney’s fees or costs.

21 IT IS THEREFORE ORDERED that Defendants Carol Severyn and Carol
22 Severyn Trust Management Services’ Motion to Dismiss (Doc. 14) is granted, to the
23 extent that Defendants Carol Severyn and Carol Severyn Trust Management Services are
24 dismissed as parties.

25 Dated this 29th day of October, 2014.

26 
27 Neil V. Wake
28 United States District Judge